# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>April 15, 2014 |
| v | No. 313621<br>Calhoun Circuit Court |
| GREGGORY LAMONT MCNUTT,<br><br>Defendant-Appellant. | LC No. 2012-000853-FH |

Before: SAWYER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Defendant Greggory Lamont McNutt appeals as of right his conviction for resisting arrest, MCL 750.81d. We affirm.

Officer Melvin Taylor was dispatched to investigate a noise complaint. After he arrived at the site of the complaint and did not hear music, he rolled down his window and heard loud music. Eventually, Taylor identified a vehicle with its trunk open as the source of the noise and saw defendant standing by the vehicle. As Taylor was getting out of his patrol car, defendant began swearing at him. Taylor asked defendant for his name, and defendant continued to act belligerent. Defendant's girlfriend subsequently walked out of the apartment building and asked Taylor what was going on. Defendant told her to disobey Taylor's orders. Deputy Kurtis Smith then arrived at the apartment complex. Defendant thereafter began moving towards the driver's door of his vehicle, and Taylor reached out to grab defendant to keep him out of the car. Taylor and Smith told defendant that he was not allowed to get anything out of the car. Defendant pulled away from Taylor. Taylor and Smith attempted to handcuff defendant but he locked his arms to prevent them from bringing his arms behind his back, and he continued to "thrash." Defendant resisted Taylor's attempts to put him in the patrol car by standing up "straight and erect."

Defendant first argues that insufficient evidence existed to show that defendant's arrest was lawful. Under MCL 750.81d(1), "the elements required to establish criminal liability are: (1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties." *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010). "Obstruct" is defined as including "the use or threatened use of physical

interference or force or a knowing failure to comply with a lawful command." MCL 750.81d(7)(a). "[*A*]*ny* conduct that rises to the level of threatened physical interference, whether it is expressed or not, is sufficient to support a charge." *People v Vasquez*, 465 Mich 83, 98; 631 NW2d 711 (2001). Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant resisted, obstructed, or opposed Taylor and Smith during the performance of their duties. Defendant did not stop when he was told not to reach toward his car, pulled away when Taylor grabbed his arm, trashed, stiffened his body to refuse to get into the patrol car, and locked his arms to prevent being handcuffed. These acts are sufficient to support a finding of obstruction. *Vasquez*, 465 Mich at 98. Second, Taylor and Smith were fully dressed in uniform and were driving marked patrol cars during the encounter, giving defendant a reason to know that Taylor and Smith were police officers. See *People v Nichols*, 262 Mich App 408, 413; 686 NW2d 502 (2004).

Defendant argues that Taylor and Smith's commands were unlawful under *Terry v Ohio*, 392 US 1, 11; 88 S Ct 1868; 20 L Ed 2d 889 (1968), and the Fourth Amendment, US Const, Am IV. "The Fourth Amendment applies to all seizures of a person, including seizures that involve only a brief detention, short of traditional arrest." *People v Shabaz*, 424 Mich 42, 52; 378 NW2d 451 (1985). "An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v Cortez*, 449 US 411, 417; 101 S Ct 690; 66 L Ed 2d 621 (1981). In Michigan, a stop may also be justified based on a civil infraction. *People v Laube*, 154 Mich App 400, 407; 397 NW2d 325 (1986). "[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 US at 21. A reviewing court "should view the totality of the circumstances" to determine if a stop was justified. *People v Barbarich (On Remand)*, 291 Mich App 468, 474; 807 NW2d 56 (2011).

Taylor's testimony that he heard loud music in the apartment complex and that he identified defendant standing by the vehicle that was the source of the noise constituted "specific and articulable facts" of a potential civil infraction violation and justified a stop. *Terry*, 392 US at 21.[1] Once defendant was lawfully stopped, Taylor had the authority to order defendant not to enter his car because it is reasonable "to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety." *Corr*, 287 Mich App at 507, quoting *Brendlin v California*, 551 US 249, 258; 127 S Ct 2400; 168 L Ed 2d 132 (2007). Defendant interfered with that authority by moving towards his vehicle after being told not to, which was the basis for his obstruction charge under MCL 750.81d. Defendant also argues that because the infraction was not committed in Taylor's presence, any arrest related to the violation was unlawful. See MCL 764.15(1). However, defendant was arrested under MCL 750.81d, not for the noise violation.

[1] No citation to any ordinance nor any language of any ordinance appears in the record or in the parties' briefs. We assume the noise ordinance is Pennfield Ordinances, § 34-130. Under Pennfield Ordinances, § 34-130, it is a civil infraction to "produce sound that is plainly audible at a distance of 50 feet . . . between the hours of 7:00 a.m. and 11:00 p.m."

Defendant next argues that the trial court erred in defining "lawful command" and by referencing a public disturbance statute in the jury instructions. We find that defendant has waived this issue. Waiver is "the intentional relinquishment or abandonment of a known right." *People v Carter*, 462 Mich 206, 215-220; 612 NW2d 144 (2000). "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights." *Id.* (finding waiver when the defense attorney "specifically approved" the trial court's instructions). In *People v Kowalski*, 489 Mich 488, 504-505; 803 NW2d 200 (2011), the Supreme Court extended *Carter* to situations where judges ask attorneys if there are any objections to the instructions. Here, the court asked if there were any objections, and defense counsel stated, "I'd only place on the record that I did submit some instructions and the Court elected to make them part of the file but were not given." The court informed defense counsel that he gave them in condensed form. Defense counsel responded, "[t]hank you, [y]our honor." Nothing in the record supports that defendant objected at trial on the same grounds now raised on appeal. *People v Stimage*, 202 Mich App 28, 30; 507 NW2d 778 (1993). And, combined with defense counsel's statement after stating his only dissatisfaction with the instructions, defendant waived this issue, which extinguishes any potential error. *Kowalski*, 489 Mich at 504-505.

Affirmed.

/s/ David H. Sawyer
/s/ Jane M. Beckering